IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1457 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRESIDENT MORBI NAGAR PALIKA

Versus

SHANKAR CHODA

Appearance:

1. Special Civil Application No. 1457 of 1994

MR BP TANNA with MS M.N.Kerravala for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 18/06/2004

ORAL JUDGEMENT

1. President, Morbi Nagar Palika, petitioner has filed this petition under Article 226/227 of the Constitution of India challenging the award dated

30.10.93 passed by Presiding Officer, Labour Court, Rajkot in reference (LCR) No.680 of 1984. The Labour Court, Rajkot by its impugned order directed that the action of the original opponent i.e. Morbi Nagar Palika discharging the workman from service from 20.6.83 is held to be illegal in violation of section 25-F of the Industrial Disputes Act. It was further directed to the opponent to reinstate the workman in service on the original post within one month from the date of publication of the award. It was further prayed that the opponent shall pay to the workman 50% of the back wages for the period from 20.6.83 till he is reinstated in service by the opponent.

2. The facts giving rise to this petition are as under:-

2.1 Shankar Choda - respondent workman was serving as a daily rated mason in P.W.D. department of Morbi Nagar Palika from 24th June, 1980, on daily wages. It is alleged by the workman that on 20.6.83 he was discharged from service illegally and without giving any notice pay and retrenchment compensation. Thereafter the workman had addressed a demand notice. The Morbi Nagar Palika did not give any reply to the same.

2.2 It is a case of the workman that the Morbi Nagar Palika had engaged new mason also in his place. The workman therefore filed a statement and claimed before the industrial tribunal where a dispute has been referred under sec.10(1)(c) of the Industrial Disputes Act for adjudication, by the Assistance Commissioner, Labour Court at Rajkot by his order dated 15.5.84. In the said application the workman prayed that the order of the authority discharging the workman on 20th June, 1983, be declared as illegal and be directed the Morbi Nagar Palika to reinstate him on his original post with full back wages and the dispute relates to demand as under:

"Shri Shankar Choda should be reinstated to his original post, with full back wages."

2.3 Thereafter the Morbi Nagar Palika had filed their written statement at Exh.9. According to the opponent, the workman was employed by them for temporary work and this word did not continue continuously but it was of casual nature. According to the opponent, they had discharged the workman from service bonafide and after offering amount of his rights. In view of the same, the Morbi Nagar Palika prays before the tribunal that the reference of the workman be dismissed with cost.

2.4 Thereafter before the tribunal the workman has examined himself at Exh.12. On behalf of Morbi Nagar Palika, chief officer was also examined. The tribunal thereafter came to the conclusion that on the basis of oral evidence of workman, the workman has worked three years continuously and, therefore, the action of the Nagar Palika discharging the workman from service without paying him notice pay was of violation of Section 25-F of the Act. As regards back wages is concerned, it was a case of the workman that he has not been employed in any other place and ultimately the tribunal has passed the discretionary order on 30.10.93 as aforesaid in this behalf.

2.5 Being aggrieved and dissatisfied with the same, the Morbi Nagar Palika through President has filed present petition before this Court on 29th January, 1994. On 3rd February, 1994, this Court (Coram: S.M.Soni, J.) has passed the following order:

> "Rule returnable on 21.6.94. By way of interim relief, the implementation, operation and execution of the award to the extent of reinstatement is stayed, subject to sec.17(B) of I.D.Act. However, the petitioner is directed to deposit the back wages as per the award within one month before Labour Court at Rajkot. Respondents will be at liberty to withdraw the same on filing an undertaking before this Court that in case of success of this petition, he shall repay the same within the time stipulated by this Court at the time of final hearing."

3. When the matter reached hearing before this Court, Mr.B.P.Tanna, learned Senior Counsel with Ms.M.N.Kerravala appeared on behalf of the petitioner.

4. The learned advocate for the petitioner has assailed the findings of the tribunal particularly the tribunal has given 50% back wages without any record. The said order is only on surmises and conjectures as there is no other evidence available in this behalf.

5. On the other hand, Mr.M.H.Rathod, learned advocate has appeared on behalf of the respondent workman and he has contended that it is a case of the workman that he was not employed at all, so the tribunal has passed the order of 50% wages which is discretionary order and, therefore, this Court may not interfere under Article 226/227 of the Constitution of India with the

said discretionary order whereas the tribunal has exercised jurisdiction on the sound principle of equity.

6. Mr.Tanna, learned counsel for the petitioner has however indicated that in this case pursuant to the order of this Court the Nagar Palika has already deposited Rs.41,925/- amount before the Labour Court. The Nagar Palika has also passed the order reinstating the respondent workman by the order dated 14.2.97, however the respondent has not started the work in the Nagar Palika though he has been given reinstatement.

7. I have considered the rival submissions. I have also considered the award of the tribunal and also subsequent development by which the Chief Officer, Nagar Palika as communicated to the learned advocate by letter dated 17.6.94. The subsequent development which I have noted in this behalf the fact that the tribunal has passed the discretionary order by awarding 50% back wages and in fact the Nagar Palika has already paid the said amount and respondent has already withdrawn the amount. I have been informed by the learned advocate for the workman that he has already withdrawn the amount after giving undertaking before this Court, however respondent workman has not started work in this behalf pursuant to the order dated 14.2.97. In view of the fact that respondent has not taken up the employment, it will not be open for the respondent to now get employment in the petitioner Nagar Palika in this behalf. In view of the same, the petition is rejected with no order order as to costs. The amount which has been paid to the respondent also be given to him and it will not be open for the petitioner to obtain refund from the respondent. The original letter dated 17th June, 2004, is taken on record. Rule is discharged. Interim relief granted earlier shall stand vacated.

(K.M. Mehta, J.)

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